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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking on the
Commission's Own Motion to Assess and
Revise the Regulation of Telecommunications
Utilities

R. 05-04-005

Rulemaking for the Purposes of Revising
General Order 96-A Regarding Informal
Filings at the Commission

R. 98-07-038

RESPONSE OF SUREWEST TELEPHONE (U 1015 C)

TO

**APPLICATIONS FOR REHEARING OF D.07-09-018
BY THE UTILITY REFORM NETWORK AND
COX CALIFORNIA TELCOM, L.L.C.**

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October 29, 2007

1 **I. INTRODUCTION.**

2 On October 12, 2007, two applications for rehearing were filed with respect to
3 D.07-09-018, the Opinion Consolidating Proceedings, Clarifying Rules for Advice Letters Under
4 the Uniform Regulatory Framework, and Adopting Procedures for Detariffing (the "URF Tariffing
5 Decision"). One application was filed by The Utility Reform Network ("TURN"), and the other
6 by Cox California Telcom, L.L.C. ("Cox"). TURN's application argues that the Commission has
7 failed to proceed in a manner required by law because it has unduly narrowed the protest rights of
8 interested parties with respect to URF advice letters. Cox seeks rehearing to remove legal and
9 technical errors that are inconsistent with the Commission's stated intent to include advice letters
10 seeking changes to "terms and conditions" of URF-regulated services under a "Tier I" standard of
11 review pursuant to G.O. 96-B. Pursuant to Rule 16.1(d) of the Commission's Rules of Practice
12 and Procedure, SureWest Telephone (U 1015 C) ("SureWest") hereby responds to these
13 applications for rehearing.

14 SureWest opposes the TURN application, as it fails to raise any legal error that would
15 justify a modification in the Commission's well-considered policy decision addressing tariffing
16 issues under URF. By contrast, SureWest supports the Cox application, since it properly seeks to
17 rectify technical errors in the URF Tariffing Decision that are inconsistent with the Commission's
18 conclusion that advice letters proposing changes to "terms and conditions" of tariffed services
19 should be subject to "Tier I" under General Order 96-B. For similar reasons, SureWest supports
20 the companion application for rehearing that Cox has filed with respect to D.07-09-019, the
21 Commission's Opinion Adopting Telecommunications Industry Rules (also filed on October 12,
22 2007).

23 **II. TURN'S APPLICATION FOR REHEARING FAILS TO IDENTIFY A LEGAL**
24 **ERROR THAT WOULD JUSTIFY OVERTURNING THE COMMISSION'S**
25 **WELL-CONSIDERED POLICY DECISION TO STREAMLINE THE**
26 **PROCESSING OF ADVICE LETTERS UNDER THE UNIFORM REGULATORY**
27 **FRAMEWORK.**

28 TURN's application for rehearing does not identify any legal error that would compel the
Commission to revisit its policy decisions in this quasi-legislative proceeding. Rather than

1 demonstrating that the Commission has "not proceeded in a manner required by law," as TURN
2 suggests, TURN's application is simply a restatement of TURN's objections to the Commission's
3 policy conclusions in the URF Tariffing Decision. *See TURN Application*, at p. 2 (citing Pub.
4 Util. Code § 1757.1.1). The Commission's decision to narrowly limit the grounds for protest of
5 URF advice letters is based on the need for less onerous advice letter procedures in light of the
6 "new and vibrant competition" noted in the URF Tariffing Decision. D.07-09-018, *mimeo*, at
7 p. 29.
8

9 TURN's application incorrectly construes the Commission's relaxed procedures for
10 reviewing URF advice letters as an abdication of the Commission's responsibilities under Public
11 Utilities Code Sections 451 and 453. Under URF, carriers are still obligated under Section 451 to
12 maintain "just and reasonable rates." Pub. Util. Code § 451. Similarly, URF carriers are still
13 prohibited from unreasonably discriminating in ways that would violate Section 453. Pub. Util.
14 Code § 453. While the Commission is bound to enforce violations of these code sections, there is
15 nothing in Section 451, Section 453, or anywhere else in the Public Utilities Code that would
16 require the Commission to permit advice letter protests on these grounds. The Commission's
17 conclusion that its procedures must change to accommodate shifts in the competitive environment
18 represents a valid and well-considered modification to the Commission's own procedures. The
19 Commission has significant authority to modify its own procedures, and the narrowing of the
20 grounds for protest of advice letters represents a thoughtful and forward-looking exercise of that
21 authority.
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23
24 Contrary to TURN's assertions, the Commission's exclusion of "unjust and unreasonable
25 rates" as a ground for protest does not constitute a blanket declaration that all rates are just and
26 reasonable. *TURN Application*, at p. 11. As the URF Tariffing Decision notes, parties are free to
27 bring complaints in response to violations of the Public Utilities Code, including in response to
28

1 alleged violations of the "just and reasonable" and "non-discrimination" standards in Public
2 Utilities Code Sections 451 and 453. *See* D.07-09-018, *mimeo*, at pp. 82-83.

3 TURN's arguments regarding the need for more expansive protest rights have already been
4 considered in the URF Tariffing Decision. *See* D.07-09-018, *mimeo*, at pp. 26-29. In comments
5 at the proposed decision stage, and previously in the proceeding, TURN has had an opportunity to
6 present its policy arguments on this issue. The Commission has considered them and rejected
7 them. No legal error has been presented, so the Commission need not revisit TURN's policy
8 arguments in response to this application for rehearing.
9

10 **III. COX'S APPLICATION FOR REHEARING IDENTIFIES CERTAIN LEGAL**
11 **AND TECHNICAL ERRORS THAT MUST BE CORRECTED, AND THE**
12 **CORRECTIONS SHOULD APPLY TO ALL URF CARRIERS.**

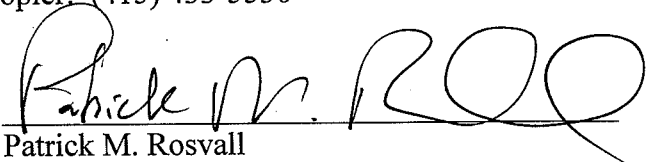
13 Cox's application for rehearing points out a series of legal and technical errors related to
14 the tier under which proposed changes to terms and conditions of tariffed services should be
15 evaluated. As Cox demonstrates, the Commission intended these advice letters to be addressed
16 under Tier I regardless of whether the changes impose more restrictive, less restrictive, or neutral
17 changes to an URF carrier's tariff. *See Cox Application*, at p. 3. For the reasons stated in Cox's
18 application, the contrary statements suggesting that these advice letters would be processed under
19 Tier III should be removed, both from the URF Tariffing Decision, and from D.07-09-019
20 adopting the Telecommunications Industry Rules under General Order 96-B. These changes
21 should apply to all URF carriers equally, including both CLECs and URF ILECs.
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1 IV. CONCLUSION.

2 As demonstrated above, the Commission should reject TURN's application for rehearing,
3 as it lacks any showing of legal error that would justify rehearing. Cox's application should be
4 granted, and the Commission should clarify that all changes to the terms or conditions on tariffed
5 services should be processed under Tier I of General Order 96-B.
6

7 Dated this 29th day of October, 2007, at San Francisco, California.
8

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1 CERTIFICATE OF SERVICE BY MAIL

2 I, Noel Gielegthem, declare:

3 I am a resident of the State of California, over the age of eighteen years, and not a party to the
4 within action. My business address is COOPER, WHITE & COOPER LLP, 201 California Street,
5 17th Floor, San Francisco, CA 94111.

6 On October 29, 2007, I served the

7 **RESPONSE OF**
8 **SUREWEST TELEPHONE (U 1015 C)**

9 **TO**

10 **APPLICATIONS FOR REHEARING OF D. 07-09-018**
11 **BY THE UTILITY REFORM NETWORK**
12 **AND COX CALIFORNIA TELCOM, L.L.C.**

13 by sending via e-mail a searchable Adobe Acrobat PDF copy of this document to the parties on the
14 attached service list who provided e-mail addresses. Hard copies were also served on parties who did
15 not provide an e-mail address by placing a true and correct copy of these **RESPONSE** with the firm's
16 mailing room personnel, for mailing in accordance with the firm's ordinary practices.

17 Hard copies were also mailed to ALJ Steven Kotz and Assigned Commissioner Chong's
18 advisor Jane Whang.

19 I declare under penalty of perjury that the foregoing is true and correct.

20 Executed on October 29, 2007, at San Francisco, California.

21 
22 Noel Gielegthem

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